

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)  
GENERAL MEMBERSHIP MEETING**

***7:00P.M., November 19, 2019***

**George V. Massey Station, Second Floor Conference Room  
516 West Loockerman Street, Dover, DE**

**MINUTES**

**MEMBERS PRESENT:** Susan Campbell, Al Cavalier, Cathy Cowin, Bill Doolittle, Ann Fisher, Terri Hancharick, Mary Ann Mieczkowski, Robert Overmiller, Jennifer Pulcinella, Brenné Shepperson, Kim Warren and Cara Wilson (for Laura Waterland)

**OTHERS PRESENT: Guests:** Liz Toney/parent advocate, Larry Ringer/ PIC, Michelle Jackson/DOE, Sarah Marlow/parent GACEC applicant, Michael Wagner/DOE, Cara Wilson/Disabilities Law Program. **Staff present:** Wendy Strauss, Executive Director; Kathie Cherry, Office Manager and Sybil Baker, Administrative Coordinator.

**MEMBERS ABSENT:** Nancy Cordrey, Matt Denn, Dana Levy, Beth Mineo, Thomas Keeton, Emmanuel Jenkins, Carrie Melchisky and Dafne Carnright.

Chairperson Ann Fisher called the meeting to order at 7:05 pm. Ann welcomed everyone to the November General Membership meeting. **A motion was made and approved** to accept the November Agenda as submitted. **A motion was made and approved** to accept the October minutes. **A motion was made and approved** to accept the September and October financial reports as submitted.

**PUBLIC COMMENT**

There were no public comments.

**PRESENTATION**

Michelle Jackson, from the Exceptional Children Resources workgroup at DOE presented on the Alternate assessment and the 1% cap. She gave an overview of the state's data for participation rates on the alternate assessment. The presentation is attached for your reference.

**DOE REPORT**

Mary Ann gave her department report which included information on the DE-PBS (Positive Behavior Supports) Tier 3 training hosted by the Exceptional Children Workgroup. She gave an update on several projects including, PBS training, PIPEline (Program Improvement Process for Equity) to career success for students with disabilities, and The Delaware Transition Cadre that meets monthly with stakeholders to review, implement, and evaluate Delaware's transition planning process. The school climate survey went out in October to staff parents and students. Mary Ann stated that Wendy asked her to speak about the recent concerns in a particular district. She thanked GACEC for notifying her

and the Secretary and shared that the Exceptional Children Resources workgroup has gone out to monitor all of their records. They are still in the process of doing the monitoring. The information will be put into a data base as a part of DOE's protocol. The information will be put in to a record of students who have an error on their evaluation summary report or IEP. During this process, the district must make all student corrections. There will then be a series of professional learning for staff and then the ECR will go in and sample IEPs to make sure that the issue is not a systemic issue. Wendy asked how long the process would take. Mary Ann shared that they are almost done, but the process is tedious because they are looking at 28 elements on each child. Wendy asked about on site monitoring. Mary Ann shared that they are doing on site monitoring, but there is more to the review process than on site monitoring. The team currently has a 5-year rotation with on site monitoring for districts and 3 years for charter schools. Discussion ensued about the alleged concerns and additional issues that have been reported by staff and parents and the current process that the department uses to monitor. Al Cavalier suggested that before moving on we need to make an action plan. A motion was made to form a sub- committee to study and address the issue. The motion was approved, and members were asked to raise their hands if they were interested in participating. Members requesting to participate were: Al Cavalier, Jen Pulcinella, Cathy Cowin, Terri Hancharick, Robert Overmiller, and Bill Doolittle. Sarah Marlow who is a GACEC applicant also asked to participate.

### **CHAIR/DIRECTORS REPORT**

Wendy shared that GACEC budget hearing was held November 5<sup>th</sup> and we once again asked for money to staff a part time policy person, in addition to money to have WI-FI in the building. She talked about the new security system that will hopefully be fully installed in January. Wendy shared information about the work that is being done on the video production that was funded by Joint Finance to create videos with best practices for teachers. She asked Mary Ann and anyone else to send us any ideas they may have for videos. Del D Hub is undergoing an overhaul and will be redesigned and housed on a new platform. Glyne Williams reached out to Wendy to ask that the Director and Deputy Director be allowed to present to Council about the adult dental services, they will be coming in January to present during the public comment period. Wendy asked Mary Ann who could speak to the restraint and seclusion report and the increase in incidents. Mary Ann advised that Brian Moore is who is handling that now.

### **AD HOC COMMITTEE REPORTS**

None at this time

### **COMMITTEE REPORTS**

### **ADULT TRANSITION SERVICES**

Cathy Cowin shared that the committee met with Michael Wagner from the Department of Education Driver Training program. He updated the committee on current practices and guidelines for students with disabilities and driver training. Mr. Wagner shared that if there were physical adaptations required the Department of Education would pay for Moss Rehabilitation to make any accommodations needed.

## **CHILDREN AND YOUTH**

Bill shared that his committee went over their goals and discussed the progress that has been made. They committee discussed the situation in Christina School District. The group spoke in depth about restraint and seclusion and the reporting procedure currently in place. The committee will continue to focus on this issue to provide recommendations for improving the process.

## **INFANT AND EARLY CHILDHOOD**

Jen shared that her committee discussed the ongoing transition policy update. Sue shared that the policy is still under review and will be available for public comment in February along with their federal grant application. Sue suggested the committee speak to Cindy Brown regarding 619's perspective on the policy update process.

## **POLICY AND LAW**

Cara Wilson reported out in the Absence of the chair. The committee voted to approve the recommendations outlined in the legal memo with the following additions: **On 23 DE Regulation 353** the committee recommended adding evidence based and evidence informed to the definition section as separate entries. The committee also stated that children with disabilities are at a higher risk to experience abuse and are often excluded from curriculum on relationships and sexuality, and that inclusion of those students should be explicit. DE Regulation 357 the committee would like to bring the definition of LIEP (Language Instruction Education Program, formerly ESL English as a Second Language) in line with the federal definition to make it clear the LIEP contemplates bilingual education. The commentary from the legal memo is as follows:

### **1. Proposed DDOE Regulation on Federal Programs General Complaint Procedures, 23 Del. Register of Regulations 343 (Nov. 1, 2019)**

The Delaware Department of Education ("DDOE") proposes to amend 14 DE Admin. Code 258, which outlines the complaint process for violations of certain federal laws. The changes made are non-substantive, including updating the name of a federal law, capitalization changes, and re-numbering the regulation. Council may not wish to comment or may wish to support this amendment.

### **2. Proposed DDOE Regulation on Student Rights and Responsibilities, 23 Del. Register of Regulations 345 (Nov. 1, 2019)**

The Delaware Department of Education is required to review regulations every four years. 14 DE Admin. Code 605 requires school districts and charter schools to have, distribute and report a policy on student rights and responsibilities. DDOE proposes to reauthorize this regulation without making any changes. Council may not wish to comment or may wish to support this reauthorization.

**3. Proposed DDOE Regulation on School Attendance, 23 Del. Register of Regulations 347 (Nov. 1, 2019)**

The Delaware Department of Education (“DDOE”) proposes to amend 14 DE Admin. Code 615, which requires each school district to adopt a school attendance policy, distribute it as outlined in the regulation, and make certain reports about its policy to the Delaware Department of Education.

The current regulation only states that school districts must have, distribute, and report attendance policies. The proposed amendment adds “charter schools.” Charter schools are public schools but are not part of school districts. This amendment will ensure that all public schools, including charter schools, are required to have, distribute, and report attendance policies. Council may not wish to comment or may wish to support this amendment.

**4. Proposed DDOE Regulation on K to 12 Comprehensive Health Education Program, 23 Del. Register of Regulations 353 (Nov. 1, 2019)**

The Delaware Department of Education (“DDOE”) proposes to amend 14 DE Admin. Code 851 which requires school districts and charter schools [hereinafter: school districts] to establish a comprehensive health education program and outlines the requirements for such program. The regulation is being amended to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150<sup>th</sup> General Assembly [hereinafter SB 78], and to indicate that the hours of health education included within are minimum requirements.

Many of the proposed changes are strictly correcting grammatical errors throughout the regulation. These changes are small and do not require comment.

The first notable change occurs in the new first section of the proposed regulation, where definitions are included to define “Consent” using the language found in SB 78; “Department” as DDOE; “Evidence-based or Evidence-informed” as those approaches which have been proven to be effective at delaying negative outcomes; and “Promising Practices” as those strategies with strong data showing positive outcomes, but which lacks enough data to support generalizable outcomes.

Promising Practices encompasses programs and strategies that are not yet evidence-based because there is not yet enough research, data, or replication to show that the particular program can have those positive outcomes generally. However, in amended sections 2.1.7 and 2.1.8, “evidence-based” and “evidence-informed” is further defined to include “*Promising Practices* and components such as guest speakers, those with lived experience and may be taught through other subjects.” (*emphasis added*). Because Promising Practices does not include programs that are evidence-based or evidence-informed as defined in amended section 1.0, DDOE should not include “Promising Practices” in the definition of evidence-based or evidence-informed practices.

The Every Student Succeeds Act (“ESSA”) requires that school districts shall “develop, implement, and evaluate comprehensive programs and activities that may include... drug and violence prevention activities and programs that are *evidence-based*[.]” 20 U.S.C. § 7118(5) (*emphasis added*). This can include such programs as those outlined in the proposed amended regulation sections 2.1.7 and 2.1.8. In addition to ESSA, the Individuals with Disabilities Education Act (“IDEA”) references nearly 30 years of research and experience demonstrating that “educating children with disabilities can be made more effective by...including the use of scientifically based instructional practices, to the maximum extent possible.” 42 U.S.C. § 1400(c)(5)(E). Arguably, the same would hold true for those students in the regular education classroom as well.

As described above, because Promising Practices is *not* an evidence-based program and therefore runs counter to the spirit of both ESSA and IDEA. Councils may wish to recommend DDOE strike the references to “Promising Practices” from the proposed amendment. The duplicative sentence in 2.1.7 and 2.1.8 would then read:

“Evidence-based may include components such as guest speakers, those with lived experience, and may be taught through other subjects.”

In the alternative, the above sentence could be included in the definition for evidence-based or evidence-informed, since having guest speakers, especially those with lived experiences, is an evidence-based practice. The definition for evidence-based or evidence-informed would then read:

“‘**Evidence-based**’ or ‘**Evidence-informed**’ means strategies, activities, or approaches, which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome. Examples include guest speakers, inclusive of those with lived experiences.”

Although there are currently a smaller number of evidence-based programs available to teach students about consent, they *do* exist and should be used by Delaware school districts. One example is Illinois-based Rape, Advocacy, Counseling & Education Services (RACES). RACES is an organization that has developed evidence-informed sexual violence and prevention programs that are accessible to students in grades K-12 ([cu-races.org/education](https://cu-races.org/education)). For violence and drug prevention, there are many evidence-based programs available to schools. As an example, LifeSkills® Training is a classroom-based prevention program for ages 11-18 which has been rated as “effective” based on several studies (<https://www.crimesolutions.gov/ProgramDetails.aspx?ID=186>, [youth.gov](https://youth.gov)). A directory of more than 200 programs, a majority of which have been rated as “effective” or “promising” can be found at <https://youth.gov/evidence-innovation/program-directory>. DDOE should consider using programs that are evidence-based or evidence-informed to the maximum extent possible.

The second major change and point of clarification involves amended section 2.1.8, which requires that “[i]nclusion of Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others’ personal boundaries shall be provided by each school district and charter school serving one (1) or more of the grades 7 through 12 no later than the 2020-2021 school year.” This language is in line with § 4167(a) of SB 78. It is unclear from the proposed amendment (and SB 78) whether instruction about consent will be provided in grades below seventh.

As demonstrated by the program through RACES, consent is a topic that can be taught to and understood by students in grades below seventh. Although those discussions in the younger grades do not typically involve the topic of *sexual* consent, children are capable of understanding the concept of giving permission. Beginning in the younger grades can teach students “about personal boundaries, how to say no, and how to respect no—and in the unfortunate case that students do experience sexual abuse or harassment, how to ask for help.” <https://www.edutopia.org/article/teaching-consent-elementary-students>.

In addition to understand the concept of consent, it is important to instruct students below seventh grade on this crucial topic because approximately 35% of survivors of sexual assault are between the ages of 0 and 11. Howard Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, U.S. Dep’t of Justice (July 2000) (<https://www.bjs.gov/content/pub/pdf/saycrle.pdf>). Furthermore, nearly 50% of all forcible and unwanted fondling is done to survivors between ages 0 and 11. *Id.*

Alarming, the rate of nonfatal violent crime and rape or sexual assault against individuals with disabilities was 1.5 times higher and 2 times higher, respectively, than the rate for persons without disabilities. Michael R. Rand and Erika Harrell, *Crimes Against People with Disabilities, 2007*, Bureau of Justice Statistics, U.S. Dep’t of Justice (October 2009) (<https://www.bjs.gov/content/pub/pdf/capd07.pdf>). Although the 2009 report does not include rates for children below the age of 12, a probable assumption could be made that children with disabilities below the age of 12 are experiencing instances of sexual violence at an exceedingly high rate.

Council should consider recommending that DDOE explicitly include evidence-based and evidence-informed, age- and developmentally-appropriate consent education for grades below seventh. Modifications to the amended 2.1.8 could read as follows:

“Beginning in the 2020-2021 school year, each school district and charter school shall provide Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others’ personal boundaries as part of its comprehensive health education program. Instruction on consent and personal boundaries shall be sequential and be provided in grades K-12.”

Council may wish to support this proposed amendment, but ask that DDOE make the above changes, including recommending that DDOE:

- Remove “Promising Practices” from the regulation, or at minimum, strike or modify the references to “Promising Practices” from the proposed amendment in 2.1.7 and 2.1.8 related to the definitions of evidence based or evidence informed practices.
- Explicitly include evidence-based and evidence-informed, age- and developmentally-appropriate consent education for grades below seventh in subsection 2.1.8.

**5. Proposed DDOE Regulation on Educational Programs for English Language Learners (ELLs), 23 Del. Register of Regulations 357 (Nov. 1, 2019)**

DDOE proposes to amend 14 DE Admin. Code 920, which establishes procedures for identification, education, and evaluation of English Language Learners. This regulation is being amended to make minor corrections, update definitions and terminology, and to comply with 29 Del. C. § 10407, which requires regulations to be reviewed every four years.

Several of the initial notable changes occur within the Definitions section of the proposed amendment. The definitions for “Bilingual Programs” and “English as a Second Language (ESL) Programs” are completely stricken. The latter is now referred to as “Language Instruction Education Program (LIEP),” however the former was removed completely with no replacement.

The removal of “bilingual programs” is concerning due to the proven efficacy of bilingual education on students whose first language is not English. W. Thomas and V. Collier, *A national study of school effectiveness for language minority students' long-term academic achievement*, Center for Research on Education, Diversity & Excellence (2002). It seems as though DDOE is removing bilingual programs and moving toward *only* providing LIEP, which provides instruction only in English. DDOE should reconsider removing bilingual programs from this proposed amendment given its proven positive effect on the long-term achievement of students whose first language is not English. In addition to the positive effect on those whose first language is not English, dual-language and immersion programs have also been shown to be beneficial to students whose first language *is* English; dual-language programs are the norm in many countries.

The second definitional change that poses a concern is that of English Language Learners themselves. First, DDOE proposes to change “English Language Learners” to “English Learners,” which is, arguably, not an issue because the two terms can be interchangeable. The biggest issue is with the change in definition itself. The proposed amended definition reads:

“**English Learners (ELs)**’ means individuals who, among other things, have English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware’s standardized entrance and exit procedures”

The proposed change poses two issues. First, the inclusion of “among other things” leads to a vague definition. What does “among other things” mean? That clause adds nothing to the definition of ELs and, if nothing else, should be removed. Second, the new proposed definition moves away from who the student *is* and toward how the student performs on standardized tests. This is most concerning because it is as if DDOE is attempting to return to the era of No Child Left Behind (NCLB) and the focus on standardized tests. If the mention of “standardized entrance and exit procedures” is referring to the WIDA assessment in the English Learner Guidebook, that is unclear from the language above. Third, the definition is vague in terms of whether DDOE intends to apply this definition to students with disabilities whose impairments impact their abilities to speak, read, write, or understand.

It seems as though DDOE is attempting to take bits and pieces of the ESSA definition of English Language Learners, which also includes the following language:

English learner means “an individual whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the challenging State academic standards[.]” 20 U.S.C. § 7801 20(D)(i).

What DDOE fails to include or, arguably, consider is the rest of 20 U.S.C. § 7801 20(D), which notes that the difficulty mentioned above may be sufficient to deny the individual “the ability to successfully achieve in classrooms where the language of instruction is in English; or the opportunity to participate fully in society.” 20 U.S.C. § 7801 20(D)(ii)-(iii).

Council should consider recommending that DDOE redefine “English Learner” to remove the mention of state assessments and include more references to how the individual’s lack of English proficiency hinders their participation in society and academic success in areas other than the state standardized test. A suggested definition is as follows:

**“English Learner (EL)** means an individual who is linguistically diverse and who is identified by the Home Language Survey as having a level of English language proficiency that requires language support to fully participate in the school setting and to achieve academic standards in grade-level content.”

This definition removes the focus on standardized tests and focuses on acknowledging the benefits of speaking more than one tongue, acknowledging that being an English learner is not a “difficulty,” but that supports are needed to ensure success. This definition includes mention of the Home Language Survey but does not include mention of the “standardized entrance and exit procedures” because it is, arguably, unnecessary because that information is included in 2.2.2.

The final major change is under the Programs of Instruction for ELs. Under 3.1, DDOE proposes to remove the requirement that programs selected for the education of ELs be research-based. Both the IDEA and ESSA require that schools use programs, curricula, and practices based on “scientifically-based research” “to the maximum extent possible.” 42 U.S.C. § 1400(c)(5)(E). Removing this requirement goes against the spirit of the IDEA and ESSA and therefore DDOE should not remove this requirement.

Council may wish to consider supporting this amendment, but request that the above changes be made.

## **6. Proposed DDOE Regulation on School Transportation, 23 Del. Register of Regulations 361 (Nov. 1, 2019)**

The Delaware Department of Education (“DDOE”) proposes to amend 14 DE Admin. Code 1150, related to school transportation. The regulation is being amended to clarify safety procedures and protocols and to align with federal and state requirements motor vehicle requirements. Due to the length and mostly technical nature of the proposed changes, this analysis will focus only on a handful of discrete amendments.

First, subsection 3.1.23 requires districts to ensure that training is provided to bus drivers and aides who “perform duties on buses that transport wheelchairs and students using safety seats.” Such trainings must include proper securement of wheelchairs, safety seats and safety equipment. Councils



should consider commending DDOE for requiring such training. However, Councils should consider urging DDOE to go a step further and require that all Bus Drivers, Aides, and supervisors receive such training, rather than only those who perform duties on buses with wheelchair/safety seat users. This will help ensure the safety of students with disabilities, regardless of last minute or urgent staffing changes on their bus.

Second, subsection 8.3.13 specifies that “Aides should remain in close proximity of the bus and should not cross students farther than the front drivers cross view mirror or escort students to their houses.” However, a child may require additional or different escorts, such as door-to-door transportation, pursuant to an IEP or Section 504 plan. Councils should request that this be clarified in the regulation either explicitly or by cross referencing proposed subsection 12.10 (“Additional transportation benefits are determined based upon the Pupil’s individual needs as specified in a 504 or IEP...”). The same comments apply to 10.8.1.

Next, while a substantive change was not made to subsection 10.16, Councils may wish to encourage DDOE to consider amending subsection 10.16, with respect to service animals, to ensure compliance with the ADA. Presently this provision requires a physician certification or inclusion in an IEP or 504 Plan.

Fourth, subsection 10.25, states: “No Pupil shall be carried up or down the bus steps during normal loading and unloading, and safety protocols shall be put in place to safely load and unload the Pupil.” However, it is unclear what DDOE by “and safety protocols shall be put in place to safely load and unload the Pupil.” For example, DDOE may mean that if a pupil exits the bus other than during “normal loading and unloading,” such as due to a disability, they may be carried up or down steps with proper safety protocols. The Councils may wish to request clarification on this subsection.

The next change of note is subsection 12.10 which clarifies that “Additional transportation benefits are determined based upon the Pupil’s individual needs as specified in a 504 or IEP...” Councils may wish to encourage DDOE to add “or modified” to this subsection to clarify that not only may some students require additional transportation benefits, such as a 1:1 Aide during transit, some will require modifications to transportation, e.g. moving the bus stop to an accessible location or door to door transport. Council may also wish to advocate that the ADA should be referenced in this provision as well, as a student may need accessible transportation without necessarily needing an IEP or 504 plan.

DDOE also adds to this subsection 12.10 that such additional needs “are not arranged upon the parent or guardians needs.” This is problematic for parents with disabilities who may have difficulty accessing traditional bus locations. In defining a “qualified individual with a disability,” courts have ruled that the provisions of the Rehabilitation Act and accompanying U.S. Department of Education regulations extend to parents seeking services related to their children’s education. See Rothschild v. Grottenthaler, 907 F.2d 286 (2d Cir. 1990). Further, the federal government clearly intended for the protections of Title II of the ADA to extend to “any qualified individual with a disability involved in any capacity in a public entity’s programs, activities, or services,” which in the school context would cover not only a student but “a visitor, spectator, **family member**, or associate of a program participant.” Americans with Disabilities Act Title II Technical Assistance Manual, available at <http://www.ada.gov/taman2.html#II-2.0000> (emphasis added). The U.S. Department of Education’s Office of Civil Rights has also clearly stated that Title II of the ADA applies to “students, **parents**, and other program participants” in schools. Russlyn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, “Dear Colleague” letter, Jan. 19, 2012, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.pdf> (emphasis added). Councils may wish to encourage DDOE to add a clarification to 12.10 such as: additional needs “are not

arranged upon the parent or guardians needs unless necessary for compliance with the Americans with Disabilities Act or Section 504 of the Rehabilitation Act.”

Council may wish to consider making the following recommendations with respect to this proposed regulation as follows:

- Commending the DDOE for requiring wheelchair and safety equipment training, but recommending that the DDOE modify subsection 3.1.23 to require such training for all Bus Drivers, Aides, and supervisors.
- Request that subsection 8.3.13 be clarified either explicitly or by cross referencing proposed subsection 12.10 (“Additional transportation benefits are determined based upon the Pupil’s individual needs as specified in a 504 or IEP…”). The same recommendation applies to 10.8.1.
- Council may wish to encourage DDOE to amend subsection 10.16, with respect to service animals, to ensure compliance with the ADA.
- Recommend clarification of subsection 10.25.
- Council may wish to encourage DDOE to add “or modified” as well as a reference to the ADA to subsection 12.10, to clarify that not only may some students require additional transportation benefits, some will require modifications to existing transportation, and that such requirements may be pursuant to the ADA.
- Finally, Council may wish to request that the DDOE modify the second provision of subsection 12.10, with respect to parents and guardians, to clarify that their needs may need to be considered if related to the parent/guardian’s disability.

**The motion to approve came from committee and did not require a second. The motion was approved.**

### **MEMBERSHIP COMMITTEE**

No report

### **PERSONNEL COMMITTEE**

There was no report at this time.

### **OUTSIDE COMMITTEE UPDATES**

### **FINAL REPORT FROM THE CHAIR**

Ann thanked our guests and announced absent members. She reminded those in attendance that letters sent by GACEC and any responses could be found in the binder at the back of the room. **A motion was made to adjourn** the meeting. **The motion was approved**, and the meeting was adjourned at **8:49 p.m.** Ann announced that there is no meeting in December.